

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,

v.

CARL M. FRANCIS,

Defendant.

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ID No. 1505007544

Date Submitted: September 23, 2019

Date Decided: November 15, 2019

ORDER

Upon consideration of Defendant's Motion to Modify Sentence ("Motion"), Superior Court Criminal Rule 35, statutory and decisional law, and the record in this case, **IT APPEARS THAT:**

1. On January 27, 2016, Defendant pled guilty to numerous charges.¹ On April 8, 2016, Defendant was sentenced to 12 years of unsuspended time at Level V followed by decreasing levels of supervision and probation.²

¹ D.I. 13 (Home Invasion, Possession of a Firearm by a Person Prohibited, and Possession of Ammunition by a Person Prohibited ("PFBPP/PABPP"), Impersonating Police, Aggravated Menacing, and Conspiracy Second Degree).

² See D.I. 36. Specifically, Defendant was sentenced as follows: for Home Invasion, 16 years at Level V, suspended after 7 years, for 6 months at Level IV (DOC Discretion), followed by 18 months at Level III; for PFBPP/PABPP, 5 years at Level V (mandatory minimum); for Impersonating Police, 7 years at Level V, suspended for 18 months at Level III; for Aggravated Menacing, 5 years at Level V, suspended for 18 months at Level III; and for Conspiracy Second Degree, 2 years at Level V, suspended for 18 months at Level III. *Id.* In addition, probation runs concurrent. For Home Invasion, the first 6 years at Level V are the minimum mandatory sentence. See 11 Del. C. § 826A.

3. On September 23, 2019, Defendant filed the instant motion,³ his second, asking the Court to run his sentences concurrently.⁴ In support of the Motion, Defendant states: (1) his poor health, personal history, and living situation lead to his criminal conduct; (2) he accepts responsibility; (3) his rehabilitative efforts while incarcerated; (4) his prison record; and (5) his 5-year plan upon release.⁵

4. Pursuant to Superior Court Criminal Rule 35(b), the Court may reduce a sentence of imprisonment on a motion made within 90 days after the sentence is imposed.⁶ The Court will not consider a motion made more than 90 days after the sentence is imposed unless: (1) a defendant establishes extraordinary circumstances or (2) the Department of Correction (“DOC”) filed a motion for good cause shown under 11 *Del. C.* § 4217.⁷ Under Delaware law there is a heavy burden on a defendant-petitioner to establish extraordinary circumstances in order to “uphold the finality of judgments.”⁸ Extraordinary circumstances are a “highly unusual set of facts that are not commonly associated with a particular thing or event.”⁹ In the context of Rule 35(b), extraordinary circumstances are those that “specifically

³ D.I. 39. On June 28, 2016, Defendant’s first motion was denied. *See* D.I. 38.

⁴ D.I. 39.

⁵ *Id.*

⁶ Super. Ct. Crim. R. 35(b).

⁷ *Id.*

⁸ *State v. Redden*, 111 A.3d 602, 607 (Del. Super. 2015).

⁹ *State v. Tollis*, 126 A.3d 1117, 1121 (Del. Super. 2016) (quoting *State v. Diaz*, 2015 WL 1741768, at *2 (Del. Apr. 15, 2015)).

justify the delay;’ are ‘entirely beyond a petitioner’s control;’ and ‘have prevented the applicant from seeking the remedy on a timely basis.’”¹⁰ Pursuant to 11 *Del. C.* § 4217, the Court may modify a sentence if the DOC files an application “for good cause shown which certifies that the release of the defendant shall not constitute a substantial risk to the community or the defendant’s own self.”¹¹

6. Defendant filed the Motion more than 3 years after the imposition of his sentence. Therefore, the Court will consider the Motion only if the DOC filed an application for good cause shown or Defendant establishes extraordinary circumstances that warrant consideration of the Motion. The DOC did not file an application for good cause shown and Defendant does not state any extraordinary circumstances connected to his Motion.

7. Rule 35(b) states that “the Court will not consider repetitive requests for reduction of sentence.”¹² In the context of Rule 35(b), a motion is considered repetitive when the motion “is preceded by an earlier Rule 35(b) motion, even if the subsequent motion raises new arguments.”¹³ The repetitive bar is “absolute and flatly ‘prohibits repetitive requests for reduction of sentence.’”¹⁴ Defendant’s Motion is repetitive.

¹⁰ *State v. Culp*, 152 A.3d 141, 144–45 (Del. 2016) (quoting *Diaz*, 2015 WL 1741768, at *2).

¹¹ 11 *Del. C.* § 4217.

¹² Super. Ct. Crim. R. 35(b).

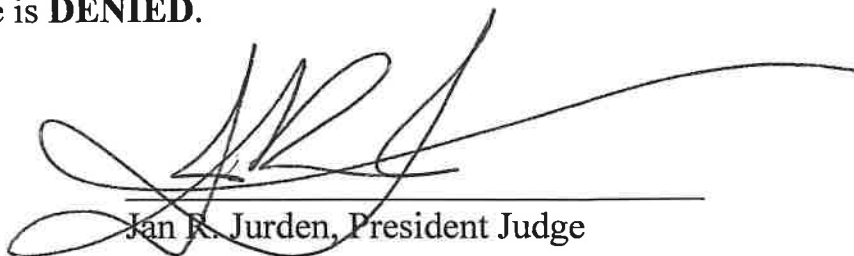
¹³ *Culp*, 152 A.3d at 144.

¹⁴ *Redden*, 111 A.3d at 608–09; *see also* 11 *Del. C.* § 4217.

8. The sentence is reasonable and appropriate for all the reasons stated at the time of sentencing. No additional information has been provided to the Court that would warrant a reduction or modification of this sentence.

Accordingly, for the foregoing reasons, this Court finds that Defendant has not demonstrated cause for the relief sought.

NOW, THEREFORE, IT IS HEREBY ORDERED that Defendant's Motion for Modification of Sentence is **DENIED**.



Jan R. Jurden, President Judge

Original to Prothonotary

cc: Carl M. Francis, *pro se* (SBI# 00386953)
Julie A. Finocchiaro, DAG